IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:19/07/2005

CORAM

THE HONOURABLE MR.JUSTICE M.KARPAGAVINAYAGAM
and
THE HONOURABLE MR.JUSTICE S.SARDAR ZACKRIA HUSSAIN

Criminal Appeal No.628 of 1999

1. Suresh Kumar @ Suresh
2. Mohammed Ali @ Monu @
Jambu
3. Narayanamoorthy @
Wins Moorthy .. Appellants

-Vs-

The State of Tamilnadu, rep.
by the Inspector of Police,
B1, Bazaar Police Station,
Coimbatore. .. Respondent

Criminal Appeal preferred under Section 374 Cr.P.C. as against the conviction imposed in the judgment of the learned Principal Sessions Judge, Coimbatore, dated 15.07.1999 in S.C.No.99 of 1999.

!For appellants : Mr.L.Mahendran
^For respondent : Mr.E.Raja,
Additional Public Prosecutor
:J U D G M E N T

(Judgment of the Court was delivered by M.KARPAGAVINAYAGAM,J.)
A.1 to A.3 are the appellants herein. Suresh Kumar @ Suresh, who is arrayed as A.1, Mohammed Ali @ Monu @ Jambu, who is arrayed as A.2 and Narayanamoorthy @ Wins Moorthy, who is arrayed as A.3, have been convicted by the trial court for the offence punishable under Section 302 r/w. 109 IPC and sentenced to undergo imprisonment for life. Challenging the same, this appeal has been preferred.

2. The short facts leading to the filing of the appeal are as follows:
"(a) The deceased Ramalingam, P.W.1-Appavoo, P.W.2-Murugesan, are the friends and A.1 to A.3 are the residents of Kempatti Colony at Coimbatore. On 14.9.1997 at about 10 p.m., P.Ws.1 and 2 along with the deceased went to Mahalakshmi Bakery to take tea. When they reached Mahalakshmi Bakery by travelling in a TVS moped, all the three accused, who were standing near Mahalakshmi Bakery, called them. P.W.1 left the moped

nearby and all of them went near the accused. A.3, Wins Moorthy questioned the deceased as to why he was spoiling the women folk in the area. The deceased reacted by stating that he would continue to do it and no one can challenge him. Thereafter, A.3 caught hold of the right hand of the deceased, A.2 caught hold of the left hand of the deceased and A.3 instigated A.1 to stab the deceased. Thereupon, A.1 took out a button knife from his pocket and stabbed the deceased on the left side of his chest, as a result of which the deceased fell on the ground. Thereafter, all the accused ran away from the scene of occurrence.

(b) On noticing the deceased falling down on the ground and gasping for life with bleeding injuries, P.Ws.1 and 2 rushed to the house of the deceased, which is situated nearby, and informed about the incident to P.W.3 Arumugam, who is the brother of the deceased. Then, P. W.3, along with P.Ws.1 and 2 came to the scene of occurrence and arranged for an auto in which the deceased was taken to the hospital. As requested by P.W.3, P.W.1 went to the Police Station and lodged Ex.P.1 complaint at 10.30 p.m. The complaint was registered by P.W.12, the Sub Inspector of Police in Crime No.1590 of 1997 for the offence punishable under Section 307 IPC.

(c) In the mean time, the deceased was taken to the Government Hospital, Coimbatore at 10.20 p.m. P.W.5 doctor admitted him and issued Ex.P.5 accident register. Then P.W.7 doctor who is attached to the Cardiothorasic Surgical Wing at Coimbatore Government Hospital conducted a surgery on the deceased. Ex.P.7 is the medical case sheet.

(d) In the mean time, Ex.P.6 intimation was sent to the Police. P.W.13, the Inspector of Police took up further investigation. He went to the scene of occurrence at 11.30 p.m., observed all the formalities and prepared observation mahazhar, rough sketch and also sized the blood stained samples.

(e) On the next day early morning at 2.30 a.m., the deceased succumbed to the injuries and his death was intimated to the police under Ex.P.8 death intimation. After receipt of Ex.P.8, P.W.13 altered the offence into one under Section 302 IPC and sent an alteration report to the court. P.W.13, at 7.00 a.m., went to the hospital and conducted inquest. During inquest, P.Ws.1 to 3 were examined. Then, a requisition was sent to the Doctor to conduct postmortem. P.W.8, the doctor attached to the Coimbatore Government Hospital conducted autopsy on the body of the deceased on 15.9.1997 and found an injury on the chest. On completion of the autopsy, he gave a postmortem certificate opining that the deceased would appear to have died of shock and hemorrhage as a result of the stab injury sustained by him.

(f) Then, on information, P.W.13, on 15.9.1997 at 2.00 p.m. arrested A.1 to A.3 near Ukkadam - Perur Bypass Road. On the confession of A.1, M.O.1 was recovered; on the confession of A.2, M.O.7, a blood stained shirt worn by A.2 was seized; and on the confession of A.3, M. O.8 was seized. Thereafter, all the material objects were sent for chemical analysis. After completion of investigation, P.W.13 filed a charge sheet against all the accused for the offence punishable under Section 302 r/w. 109 IPC.

(g) During the course of trial, on the side of the prosecution, 13 witnesses were examined, 27 exhibits were filed and 9 material objects were marked.

(h) The accused, while being questioned under Section 313 Cr.P.C. with reference to the incriminating materials, denied their

complicity in the crime.
(i) The trial court, after having considered the evidence placed on record, concluded that A.1 is liable to be convicted under Section 3 02 IPC and A.2 and A.3 are liable to the convicted under Section 302 r/w. 109 IPC and accordingly, it found them guilty of the said offence and sentenced thereunder. Hence this appeal."

3. Mr. L. Mahendran, learned counsel for the appellants, would take us through the entire evidence and would contend that the testimony of P.Ws.1 and 2 cannot be relied upon as they could not have seen the occurrence and their conduct is quite artificial and their deposition before the Court is quite contradictory to the evidence of P.W.3 and other records. Therefore, the conviction, on the basis of the evidence of P.Ws.1 and 2, the eye witnesses, cannot be held to be valid.

4. We have heard the learned Additional Public Prosecutor on these aspects.

5. We have given our anxious consideration to the rival contentions made by either side and perused the entire records.

6. According to the prosecution, on 14.9.1997 at about 10 p.m., when the deceased along with P.Ws.1 and 2 went to Mahalakshmi Bakery to take tea, they were called by all the three accused and thereafter, there was a quarrel between them. Suddenly, A.1 and A.2 caught hold of the deceased and A.1 stabbed the deceased on his chest using M.O.1 knife. Then, P.Ws.1 and 2 rushed to the house of the deceased and informed about the incident to P.W.3, who came to the scene of occurrence and made arrangement to take the deceased to the hospital. P.W.1 was asked to give a complaint and accordingly, he went to the Police Station and gave Ex.P.1 complaint. P.W.5, doctor admitted the

deceased in the hospital and gave initial treatment. P.W.7, doctor conducted a surgery on the deceased, but despite the treatment, the deceased died the next morning.

7. To prove the occurrence, the prosecution has cited two witnesses, viz., P.Ws.1 and 2. According to the prosecution, P.Ws.1 and 2 are the close friends of the deceased. It is the case of P.Ws.1 and 2 that immediately after the occurrence, they informed the incident to P.W.3, the brother of the deceased and the deceased, who was gasping for life was taken to the hospital without an y delay. The complaint which has been given by P.W.1 was registered by P.W.12 at about 10.30 p.m. It is has been specifically stated that P.Ws.1 and 2 saw the occurrence and when the deceased fell down with the bleeding injuries in front of Mahalakshmi Bakery, they rushed to the house of the deceased and informed the same to P.W.3, who made arrangements to take the deceased to the hospital.

8. A reading of Ex.P.1 complaint given by P.W.1 and the evidence of P.Ws.1 and 2 would make it clear that immediately after the occurrence, P.Ws.1 and 2 went to the house of the deceased to inform the details of the assailants to P.W.3. Only thereafter, P.W.3 took the deceased

to the hospital. These details have been given in the inquest report which has been prepared on the next day morning by P.W.13, the Inspector of Police. But, unfortunately, this version has not been supported by P.W.3 either in his statement to the doctor or to the police or at least in the Court. Ex.P.5 is the earliest document. P.W.5 is the author of the document. P.W.5 is the doctor who admitted the deceased in the hospital at 10.20 p.m. and issued Ex.P.5 accident register. The contents of Ex.P.5 are that one Murugesan (P.W.2) informed P.W.3, Arumugam, who is the brother of the deceased, that the deceased was found lying in front of Mahalakshmi Bakery at about 10.15 p.m. and that he brought to the deceased to the hospital for treatment. The relevant portion of the statement is mentioned as follows:-

"VERNACULAR LANGUAGE PORTION NOT SHOWN"

9. So, when P.W.5 was examined, he would also state that an information was given to him by the brother of the deceased that he was informed by Murugesan (P.W.2) about the fact that the deceased was found lying in front of Mahalakshmi Bakery. When this was confronted with P.W.3 in the cross-examination, he would also admit that such a statement was given by him to the doctor. Thus, it is clear that P.W.2 never informed as to the details of the assailants. As a matter of fact, P.W.3 has not given any statement either to the doctor or before the Court that he came to know from P.Ws.1 and 2 that A.1 to A.3 participated in the attack which resulted in the injuries to the deceased. Apart from that, Ex.P.7 is the case sheet, which has been spoken to by P.W.6. In the case sheet also, the very same reference has been made, which is as follows :-

"Patient alleged to have been stabbed with knife by unknown person in Karuppa Gr. Street, CBE at 9.30 p.m. in CBE on 14.9.1997. Patient is unconscious."

10. So, these documents viz., Exs.P.5 to P.7 which have been referred to by P.Ws.5 and 6 would indicate that the earliest statement given by Arumugam, P.W.3, who accompanied the deceased to the doctor was to the effect that P.Ws.1 and 2 who are the close friends of the deceased have not informed anything about the identity of the assailant. On the other hand, the FIR which has been given by P.W.1 at about 1 0.30 p.m. which reached the Magistrate would contain all the name of the assailants. If the contents of Ex.P.1 are true, there is no reason as to why P.W.3 did not choose to give the details to the doctor or the Police when he was examined. Further, the conduct of P.Ws.1 and 2 immediately after the attack is also quite artificial. There is no dispute as to the fact that P.Ws.1 and 2 are very close friends of the deceased. It is the case of the prosecution that all the accused had a grudge against P.Ws.1 and 2 and the deceased, thinking that they were spoiling the women folk in the area. If it is so, the accused would have also made an

attempt to attack P.Ws.1 and 2 also when they attacked the deceased. On the other hand, they attacked the deceased alone and ran away from the scene of occurrence.

11. Having seen the deceased gasping for life after having

been attacked brutally, it is quite un-understandable as to why P.Ws.1 and 2 did not take any steps to save the deceased, who was alive, by taking him to the hospital, that too when the occurrence had taken place in a city. On the other hand, it is the case of the prosecution that P.Ws.1 and 2 rushed to the house of the deceased and informed about the incident to the brother of the deceased. Admittedly, P.W.2 did not choose to accompany P.W.1 to the police station or accompany P.W.3 to the hospital.

12. Further, as admitted by the investigating officer, they were not able to collect any material with regard to the motive aspect. Under these circumstances, we are not able to place any reliance on the evidence of P.Ws.1 and 2 in the light of the fact that their testimony is completely contrary to the testimony of P.Ws.3, 5 and 6 and in the light of the earlier documents, viz., Exs.P.5 to P.7. Therefore, we are of the view that all the accused are entitled to be given the benefit of doubt and they are accordingly given the same. Consequently, all the accused are acquitted. The appeal is allowed. The conviction and sentence of the trial court is set aside. The bail bonds, if any, executed by the appellants shall stand cancelled.

Index : Yes.
Internet: Yes.
gs.

To
1. The Principal Sessions Judge, Coimbatore.
2. The Public Prosecutor, Chennai.

□